

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

RUSSELL GAITHER,

Plaintiff,

v.

MARTY ALLEN, et al.,

Defendants.

CIVIL ACTION NO.: 6:20-cv-11

ORDER


Presently before the Court are Plaintiff's Objections to the Magistrate Judge's Order dated September 8, 2020 and Report and Recommendation dated September 8, 2020. Docs. 16, 17. For both rulings, the Magistrate Judge determined Plaintiff is a "three striker" within the meaning of 28 U.S.C. § 1915(g), and he failed to meet the imminent danger exception to that statute allowing him to proceed with this cause of action without first paying the requisite filing fee. See e.g., Doc. 17, pp. 2–4. In his Objections to the Report and Recommendation, Plaintiff cites irrelevant and non-binding case law in support of his proposition that he may proceed *in forma pauperis* despite his status as a "three striker." Doc. 21, pp. 1–2. Plaintiff also objects to the Magistrate Judge's recommendation that Plaintiff is not in imminent danger, but the objections lack specificity and are without merit. Id. at p. 5.

After an independent and de novo review of the entire record, the Court **OVERRULES** Plaintiff's Objections. Doc. 21. The Court **CONCURS** with the Magistrate Judge's Report and Recommendation and **ADOPTS** the Magistrate Judge's Report and Recommendation as the opinion of the Court. Thus, the Court **DISMISSES without prejudice** Plaintiff's Complaint,

DIRECTS the Clerk of Court to **CLOSE** this case and enter the appropriate judgment of dismissal, and **DENIES** Plaintiff leave to proceed *in forma pauperis* on appeal.

Plaintiff also filed a separate document, captioned "Notice of Appeal," which the Clerk of Court docketed as an appeal of the Magistrate Judge's Order denying Plaintiff *in forma pauperis* status. Doc. 22. In that filing, Plaintiff states he is appealing from a "final judgment" in this case. It is unclear if Plaintiff intended this filing to be an appeal of the Magistrate Judge's Order or a notice of appeal from a final judgment in this case. To the extent Plaintiff intended this filing to be an appeal of the Magistrate Judge's Order ruling on a nondispositive matter under Federal Rule of Civil Procedure 72(a), the Court **OVERRULES** the appeal. Plaintiff offers nothing in this appeal indicating the Magistrate Judge's denial of Plaintiff's motion to proceed *in forma pauperis* is clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a). To the extent Plaintiff intended this filing to be a notice of appeal from a final judgment in this case, the notice does not require any ruling by this Court. However, the Court notes such a notice would be premature, and likely ineffective, given that final judgment has not been entered.

SO ORDERED, this 6th day of November, 2020.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA